

**CONFIRMATION
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File No. 1351.01

GPA 2681
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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OCT 22 2003

Technology Center 2600

APPLICANT: Memran EXAMINER: Trost
SERIAL NO.: 10/002,382 ART UNIT: 2683
FOR: System for Utilizing Vacuum Tubes In Computer Audio
Circuitry
FILED: 10/20/01

PETITION TO MAKE SPECIAL
PURSUANT TO MPEP – 708.02(II) AND 37 CFR 1.102

Mail Stop
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant re-submits the petition under MPEP 708.02 in response to the Decision dated September 10, 2003 in order to comply with the requirements for making the instant application special by reason of infringement of the invention thereof.

Any petition fee under 37 CFR 1.17(i) should be charged to PTO Deposit Account No. 502557. Applicant is a small entity.

Also enclosed is an Opinion of Patentability and an Opinion of Infringement which, collectively, satisfy the requirements of MPEP 708.02(II).

Respectfully submitted,
LOUIS I. MEMRAN

By: 
Melvin K. Silverman
Reg. No. 26,234

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Enclosures

1. Opinion of Patentability.
2. Opinion of Infringement.

CERTIFICATE OF TRANSMISSION

I hereby certify that, on the date shown below, this correspondence is being facsimile transmitted to the Commissioner of Patents, at Fax No. (703) 746-5919.

Marcia Scruggs
Typed or printed name of person signing this certificate
Marcia J. Scruggs
Signature

10/02/03
Date

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OPINION OF PATENTABILITY

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Dear Sir:

Currently, solid state devices such as transistors and the like are used in IC boards for the amplification of audio signals in computer audio circuitry. Transistors are compact, cheap, and reliable components. However, transistors are unable to produce an audio sound which is particularly pleasant to the human ear. In low cost digital-to-analog converters, the sound which the transistors produce is often harsh. This technology therefore does not enhance the sound quality of low cost speakers which are employed in most personal computers today. Conversely, vacuum tubes, where used at all in contemporary electronics, are employed in expensive audio systems which require transformers and ancillary vacuum tubes for their operation.

This invention provides a system and means of integrating vacuum tubes into the motherboard of a personal computer to thereby furnish, to the otherwise pedestrian speakers thereof, high quality audio characteristics.

I have caused to be effected a careful and thorough search of the art. As a result, the only art now known to the Applicant in which vacuum tubes are employed in analog to digital or digital-to-analog technology relate to the areas of audio processing; sound mixing, often as a part of a loudspeaker control circuit; and electric instruments.

This technology is reflected in the following:

U.S. Patent No. 5,721,784 (1990) to Bernardo, entitled Asymmetrical Driver for Asymmetrical Loudspeakers.

U.S. Patent No. 5,789,689 (1998) to Doidic, entitled Tube Modeling Programmable Digital Guitar Amplification System;

U.S. Patent No. 5,802,182 (1998) to Prichard, entitled Audio Process Distortion; and

U.S. Patent No. 6,350,943 (2002) to Suruga et al, entitled Electric Instrument Amplifier.

A copy of each of the above is enclosed herewith. As may be noted therefrom, traditional vacuum tubes, where combined in some fashion with contemporary digital circuitry, relate almost exclusively to audio amplifiers and amplifiers for electric instruments, such as electric guitars. Accordingly, the art does not teach a practical means of integrating a vacuum tube into a motherboard of a CUP of a personal computer having, as an effect thereof, the enhancement of the audio quality of otherwise conventional speakers associated with the personal computer.

I therefore am of the opinion that the invention, as claimed, is clearly allowable over all effective art of record.

Respectfully submitted,
LOUIS I. MEMRAN

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Dear Sir:

I, Applicant's attorney of record, have reviewed the attached Declaration of L. Memran and articles of AOPEN.COM, Inc. of Taiwan, Republic of China concerning an AX4B-533 vacuum tube and its related motherboard. In or about June, 2002, AOPEN introduced into the United States a chipset which integrated a AX4B-533 tube into a CPU motherboard utilizing an Intel 845 chip.

The Applicant has made a rigid comparison of the allegedly infringing device, and the same is attached herewith in the form of said Declaration.

AOPEN's incorporation of a vacuum tube into a chipset was for the purpose of enhancing the audio quality of speakers associated with a personal computer, and as such, falls within the scope of Applicant's Claim 1 which reads as follows:

“1. A tube card for use with computer audio circuitry comprising:
at least one vacuum tube, each of said vacuum tube having an input
and an output; a DC-to-DC voltage converter supplying high voltage
to said vacuum tube; and an analog output signal for a sound input to
said at least one vacuum tube, said output of said at least one vacuum
tube connected to an external device.”

Further, independent Claim 5 of the present application reads as follows:

“5. A combination tube card for use with computer audio circuitry,
comprising:
at least one vacuum tube, each of said vacuum tube having an input
and an output; a DC-to-DC converter supplying high voltage to said
vacuum tube; and
a sound chip having an analog output, said analog output connected to
an input of at least one vacuum tube, said output of said at least one
vacuum tube connected to an external device.”

The above claims thereby cover the use of the Applicant’s technology with reference to both sound cards and sound chips, and also relate to the use thereof within a motherboard of a computer as, for example, is reflected in Claim 6 which reads as follows:

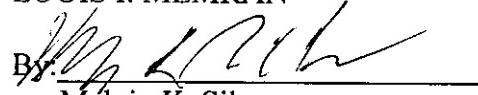
“6. The combination of a tube card for use with computer audio circuitry of claim 5 wherein:
said sound chip having a digital input/output, said digital input/output
connected to a motherboard of a computer.”

In view of the above, and the analysis of my client Louis Memran, the motherboard offered by AOPEN.COM since June, 2002 falls within the scope of one or more of the claims of the instant application. Therefore, in my opinion, some of the claims of the instant patent application (Serial No. 10/002,382) are unquestionably infringed.

Upon information and belief, AOPEN.COM not only offers their products on the Internet but, as well, sells through U.S. distributors and has been doing so for several months under the trademark COMPUTUBE.

The undersigned does not know of any patent held by AOPEN.COM or its distributors. Further, given the publication of the instant Application on or about May 2, 2002, it is unlikely that an application for patent directed to the COMPUTUBE could have been filed unless, unknown by the undersigned, the same had already been filed by such date. In any event, such filing would, in all likelihood, have been well subsequent to the Applicant's domestic priority under Serial No. 60/245,285 of November 1, 2000.

Respectfully submitted,
LOUIS I. MEMRAN

By: 
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